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UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY, CAMDEN COUNTY

Dwight David Bell)	CIVIL ACTION
Petitioner)	
V.)	No. 14 2428
)	
State Of New Jersey)	
Respondent)	

**PETITION FOR WRIT OF HABEAS CORPUS
PURSUANT TO 28 U.S.C. SECTION 2254**

Presently before this Honorable Court is a pro se petition for writ of habeas corpus filed, pursuant to 28 U.S.C. section 2254. Petitioner is currently free after completing a state sentence for a conviction of "Aggravated Sexual Assault." For the reasons which follow, it is requested of this Court to ASSUME JURISDICTION since the Public Defender's Office of New Jersey informed petitioner (in writing) that there is no remedy, at law, in the State of New Jersey to request removal from the sex offender registry despite the change in the law by the United States Supreme Court, permitting "pre-Act sex offenders' names to be removed from the sex offender registry."

BACKGROUND

State Court Proceedings.

The facts, taken from the record (in pertinent parts) are recited below, as the facts necessary to aide the Court in the disposition of this case.

Pursuant to a negotiated plea to aggravated sexual assault, petitioner was sentenced to a flat 10 years in prison. That sentence expired on “04/-01/04”.

In a letter to the sentencing judge dated “September 14, 1998” (see Exhibit A attached) the state of New Jersey informed the Court that Petitioner’s “case does not fall within the purview of the (Sex Offender Statute, N.J.S. 2C:47-1 et. al.)... therefore the case is returned to the Court for sentencing under **2C:47-3d.**”

The sentencing Court ignored the Commissioner and sentenced petitioner to an additional **Community Service for Life** (pursuant to the rejected Statute cited above) to commence after the completion of the 10 year prison sentence.

New Jersey replaced the former **Megan’s Law** with the **Adam Walsh Act** of 2006, bringing the State in “strict compliance” with the Act, thus, qualifying New Jersey for the Adam Walsh Act (AWA) grant program appropriated by the Edward J. Byrne Justice Assistance Grant Program (AJG).

After replacing **Megan’s Law** with the **Adam Walsh Act** (without providing a saving clause in the statute), New Jersey’s Attorney General reclassified Petitioner as a “**Tier III**” offender under the **Adam Walsh Act**. The reclassification subjected Petitioner to an increased obligation to register – specifically, every 90 days for life, in violation of the **separation of powers doctrine**, because it would allow the executive branch to review or overrule a decision made by the judicial branch.

Then, on **January 23, 2012**, the United States Supreme Court, in a 7 -2 decision, struck down a ruling by the 3rd Circuit Court of Appeals that permitted

registration of “Pre-Act” sex offenders. The verbatim language of the 7 – 2 majority reads:

“In our view, these provisions, read together, mean, that the Act’s Registration requirements do not apply to pre-Act offenders until the Attorney General specifies that they do apply. We reverse a Court of Appeals determination that, in effect, holds the contrary.” Reynolds v. United States, 132 S. Ct. 975 (January 23, 2012).

Motion For Relief Based On *Reynolds* - Motion Lost By The Clerk Of Court

In September of 2013, Petitioner prepared and mailed a copy of a **MOTION TO BE REMOVED FROM THE SEX OFFENDER REGISTRATION LIST PURSUANT TO THE REYNOLDS DECISION**, with Proof of Service, to the Camden County Clerk of Court – Criminal Trial Division. After months of silence, and no opposition from the prosecution, petitioner filed a **MOTION FOR JUDGMENT ON THE PLEADING** (by Certified Mail – signed by the Clerk of Criminal Court –(see Exhibit B attached hereto). That Motion was also lost or misplaced, but never filed by the Clerk of Court.

LETTER COMPLAINING THAT ACCESS TO THE COURTS IS BEING DENIED BY THE CLERKS’ OFFICE.

Petitioner’s complaint found its way into the hands of the Honorable Frederick J. Schuck’s Law Clerk (see Exhibit C attached hereto) and then into the

hands of Honorable Judge Blue (after Petitioner submitted proof – from the Docket Entries- that his Motions were never filed). Petitioner sent a new set of the original Motions to Judge Blue and she referred the matter to the New Jersey Public Defender's Office.

**NEW JERSEY STATUTE (N.J.S.A. 2C:7-2 g,) PREVENTS ANY
CHALLENGE TO CONSTITUTIONAL VIOLATIONS BY SEX
OFFENDERS NO MATTER THE CHANGE IN THE LAW BY THE
UNITED STATES SUPREME COURT.**

The New Jersey Public Defender's office refused to represent Petitioner's request (see Exhibit D attached hereto) to be removed from the sex offender registry. Petitioner's request was based upon the change in the law announced by the 7 – 2 REYNOLDS Court.

CONCLUSION:

For the reasons set forth above, this Court should assume jurisdiction and grant Petitioner's request for writ of habeas corpus.

PROOF OF SERVICE:

New Jersey's Attorney General – Certified Mail – Return Receipt Requested
Dated: April 23, 2014.

Respectfully submitted,



DWIGHT D. BELL, pro se

2326 Truesdale Road

Wilmington, N C. 28405

(910) 473 1780

Fax: (910) 769-2252

4-23-2014

Exhibit A



CONFIDENTIAL

CHRISTINE TODD WHITMAN
Governor

In Reply respond to:

ADULT DIAGNOSTIC AND TREATMENT CENTER
8 Production Way, PO Box 190
Avenel NJ 07001

ALBERT C WAGNER
YOUTH CORRECTIONAL FACILITY
Ward Avenue-PO Box 500
Bordentown NJ 08505

BAYSIDE STATE PRISON
Route 47 Delsea Drive
Leesburg NJ 08327

EAST JERSEY STATE PRISON
Lock Box R
Rahway NJ 07065

EDNA MAHAN CORRECTIONAL FACILITY FOR WOMEN
30 County Road 513
PO Box 4004
Clinton NJ 08809

GARDEN STATE CORRECTIONAL FACILITY
PO Box 11401
Yardville NJ 08620

STABILIZATION & REINTEGRATION PROGRAM
Bootcamp, Route 72
New Lisbon NJ 08064

MID-STATE CORRECTIONAL FACILITY
PO Box 866
Wrightstown NJ 08662

MOUNTAINVIEW YOUTH CORRECTIONAL FACILITY
PO Box 994
Annandale NJ 08801

NEW JERSEY STATE PRISON
PO Box 861
Trenton NJ 08625

CENTRAL RECEPTION AND ASSIGNMENT FACILITY
PO Box 7450
West Trenton, NJ 08628

NORTHERN STATE PRISON
Frontage Road PO Box 2300
Newark NJ 07114

RIVERFRONT STATE PRISON
Delaware & Elm Street PO Box 9104
Camden NJ 08101

SOUTHERN STATE CORRECTIONAL FACILITY
PO Box 150
Delmont NJ 08314

SOUTH WOODS STATE PRISON
215 Burlington Road South
PO Box 6000
Bridgeton NJ 08302-6000

State of New Jersey

DEPARTMENT OF CORRECTIONS

September 14, 1998

JACK TERHUNE
Commissioner

The Honorable Linda G. Rosenzweig, J.S.C.
Camden County Hall of Justice
101 So. 5th Street
Camden, NJ 08103-4001

Re: BELL, Dwight S24,026
Indictment No. 97-12-03644-I

Dear Judge Rosenzweig:

The above named individual was evaluated on 8-12-98 in accordance with the Sex Offender Statutes, N.J.S. 2C:47-1 *et. al.*

RESULT OF EXAMINATION

This case does not fall within the purview of the aforementioned Statute; therefore, the case is returned to the Court for sentencing under 2C:47-3d.

In every case in which the offender is convicted of one or more of the offenses enumerated in N.J.S. 2C:47-1, the Court should be cognizant of the Supreme Court of New Jersey rulings in State vs. Horne, 56 N.J. 372 (1970) and State vs. Wingler, 25 N.J. 161 (1957). These cases relate to the evaluation prepared by this facility.

Very truly yours,

JACK TERHUNE
COMMISSIONER

WILLIAM F. PLANTIER
ADMINISTRATOR

JT:WFP:sk
Enclosure
cc: Probation Department

Exhibit B

U.S. Postal Service
CERTIFIED MAIL RECEIPT
(Domestic Mail Only, No Insurance Coverage Provided)

7001 2510 0004 9731 1171		RECEIVED MAIL CENTER	
Postage	\$ 05.00	DAK	
Certified Fee	\$ 13.00		
Return Receipt Fee (Endorsement Required)	\$ 0.50		
Restricted Delivery Fee (Endorsement Required)	\$ 0.00		
Total Postage & Fees	\$ 18.50	01/18/2004	

Sent To
Office of The Clerk
Street, Apt. No.
or PO Box No.
101 S. 5th St.
City, State, ZIP+4
Camden, New Jersey 08103

PS Form 3800, January 2001
See Reverse for Instructions

SENDER: COMPLETE THIS SECTION

- Complete Items 1, 2, and 3. Also complete Item 4 if Restricted Delivery is desired.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Office of The Clerk
Camden County Hall of Justice
101 S. 5th St.
Camden, New Jersey
08103-4001

COMPLETE THIS SECTION ON DELIVERY

A. Signature

X. Bell

Agent
 Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1? Yes

If YES, enter delivery address below: No

3. Service Type

Certified Mail Express Mail
 Registered Return Receipt for Merchandise
 Insured Mail C.O.D.

4. Restricted Delivery? (Extra Fee) Yes

2. Article Number

(Transfer from service label) **7001 2510 0004 9731 1171**

PS Form 3811, February 2004

Domestic Return Receipt

102595-02-M-1540

UNITED STATES POSTAL SERVICE



First-Class Mail
Postage & Fees Paid
USPS
Permit No. G-10

• Sender: Please print your name, address, and ZIP+4 in this box •

Dwight D. Bell
2326 Truesdale Rd
Wilmington, NC 28405

05803926

Exhibit C

**Superior Court of New Jersey
Camden Vicinage**

Chambers of
FREDERICK J. SCHUCK
Judge



Camden County Hall of Justice
101 S. Fifth Street, Suite 440
Camden, New Jersey 08103
(856) 379-2380

February 25, 2014

Dwight D. Bell
2326 Truesdale Road
Wilmington, NC 28405

**Re: State v. Dwight D. Bell
Indictment No.: 3644-12-97**

Dear Mr. Bell:

We have received your letter of January 16, 2014 regarding your Motion as to your Megan's Law obligations.

Following your initial letter on this subject, we conferred with the chambers of Judge Gwendolyn Blue, who handles such matters, and provided to them a copy of your Motion which they said they would handle.

By copy of this letter we are providing to Judge Blue's chambers a copy of your latest letter for their further attention. I am also copying Seth Belson, Esq. of the Public Defender's Office for his information.

Your kind attention is appreciated.

Very truly yours,


Eleanor Hoechst, Esq. Law Clerk to
the Honorable Frederick J. Schuck, J.S.C.

Enclosure

Cc: The Honorable Gwendolyn Blue
Cc: Seth Belson, Esq.



CHRIS CHRISTIE
Governor

KIM GUADAGNO
Lt. Governor

JOSEPH E. KRAKORA
Public Defender

State of New Jersey
Office of the Public Defender

Special Hearings Unit

MICHAEL Z. BUNCHER, *Chief Counsel*
20 E. Clementon Road, Suite 301 North
Gibbsboro, New Jersey 08026
(856) 346-8060 Fax: (856) 346-8064
Seth R. Nelson, *Assistant Deputy Public Defender I*

March 7, 2014

Mr. Dwight D. Bell
2326 Truesdale Road
Wilmington, NC 28405

**Re: In the matter of Dwight D. Bell
Indictment No. 3644-12-97**

Dear Mr. Bell:

Please be advised that Judge Blue's Chambers has sent me a copy of your moving papers. If I understand your request, you appear to be seeking removal from the requirements of Megan's Law in New Jersey. This letter is in response to that inquiry.

Upon review of your file, I regret to inform you that it is my professional opinion that you are not eligible for removal from the registry at any time based on present law. This conclusion is based upon records held by our office indicating that you were convicted of a crime that precludes removal and that you were 14 years or older when the sexual component occurred. Under current New Jersey law N.J.S.A. 2C:7-2(g), those persons convicted of specific sexual crimes are not eligible to make application to the Superior Court to terminate their registration obligation-ever.

Specifically, our records indicate on September 25, 1998 you were sentenced to 10 Years N.J.S.P. for the crime of Aggravated Sexual Assault, N.J.S.A. 2C:14-2(a) (1).

The applicable statute for removal, N.J.S.A. 2C:7-2(f) & (g) says:

f. Except as provided in subsection g. of this section, a person required to register under this act may make application to the Superior Court of this State to terminate the obligation upon proof that the person has not committed an offense within 15 years following conviction or release from a correctional facility for any term of imprisonment imposed, whichever is later, and is not likely to pose a threat to the safety of others.

g. A person required to register under this section who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for more than one sex offense as defined in subsection b. of this section or who has been convicted of, adjudicated delinquent, or acquitted by reason of insanity for aggravated sexual assault pursuant to subsection a. of N.J.S.2C:14-2 or sexual assault pursuant to paragraph (1) of subsection c. of N.J.S.2C:14-2 is not eligible under subsection f. of this section to make application to the Superior Court of this State to terminate the registration obligation.

It should also be noted, that even if you had been found guilty of a crime permitting removal, you are premature to request removal, as it has not been more than fifteen years since release from prison.

I am sorry to have to tell you this information. It is my opinion that under present law, you will have to register for the balance of your life.

Since you are presently living in another state, I am at this time unable to assist you with any legal matters pertaining to your Megan's law Status in New Jersey.

If you have any questions regarding the accuracy of the documents, or our interpretation of the law, feel free to contact our office. I enclose copies of the paperwork for which I based my legal conclusion. If you feel that our records are inaccurate, and you have documentation to support your claim, please contact our office as soon as possible so that we may reconsider your eligibility based on a change of factual circumstances. At this time, I am declining to represent you as there is no legitimate legal basis upon which I can ethically make a motion.

Respectfully,



Seth R. Belson, Esquire
Assistant Deputy Public Defender I

SRB:lc

cc: Michael Z. Buncher, Chief Counsel
Hon. Gwendolyn Blue, J.S.C.
Hon. Frederick L. Schuck, J.S.C.
Matthew Spence, Asst. Prosecutor

FPDBEL2

14:00

PAGE: 0001

CASE NUMBER : 97005782 DEF SEQ NO: 001
 DEFENDANT NAME: BELL DWIGHT SENTENCE SEQ NO: 001
 CHARGING DOC : INDICTMENT CDR NO: 0000
 CHARGE COUNT : 001 STATUTE : 2C:14-2A(1) IND/ACC NO : 97-12-03644-I
 STATUTE : AGG SEX ASSLT-<13 YRS.
 STATUTE DEG : DEGREE NOT ASSIGNED SENTENCE CONT : AGGREGATE SENTENCE
 SENTENCE DISP : INCARCER GENERAL JAIL DAYS: 0396 INCAR LENGTH: 010Y00M000
 PLACE SENTENCE: CARE COMMISS/CORR GAP: 0000 PRIOR SVC: 0000 ROSADO: 000
 PAROLE INELIG : 00Y00M000 PAROLE SUPERVISION: 00Y00M000 CSL/PSL :
 PROBATION TIME: 00Y00M COMM SERV HR: 0000 LICENSE SUSP : 000
 PC ACTION :
 SENTENCE DATE : 09 25 1998
 JUDGE : ROSENZWEIG LINDA G DNA ORDERED :

-FEES AND FINES

SNSF :	75.00	LETF :	30.00	VCCA :	50.00
LAB :		DESI :		:	
:		:		:	
:		:		:	

COMMENTS :

PG906544 NO MORE SENTENCE RECORDS FOUND

PF7-PRIOR PF8-NEXT PF9-PRIOR FEES PF10-ADDL FEES

WESTERN UNION MONEY ORDER

Payable at West Ferguson Bank, Grand Junction - Downtown, N.A., Grand Junction, Colorado

WESTERN UNION FINANCIAL SERVICES INC. - ISSUER
Englewood, Colorado

14-872968312

6/20/14 6/24/14
7/16/14
148729683128 L 0-1112 \$ 5.00

PAY EXACTLY FIVE DOLLARS AND NO CENTS

PAY TO THE ORDER OF Clerk of U.S. District Court

PURCHASER'S ADDRESS 2326 Transsante Rd. Dwight D. Bell

Wilmington, NC 28405

1021005001: 4014872968312810